

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Roger Witherow, et al)
Dist. 9, Map 89, Control Map 89, Parcel 41.00,) Maury County
S.I. 000 & 001)
Tax Year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

S.I. 000

	<u>Acres</u>	<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Assessment</u>
MKT.	54.28	\$294,000	\$5,300	\$299,300	---
USE	54.28	\$ 33,600	\$5,300	\$ 38,900	\$9,725

S.I. 001

<u>Acres</u>	<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Assessment</u>
10.0	\$1,000,000	\$ -0-	\$1,000,000	\$400,000

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on May 15, 2007 in Columbia, Tennessee. In attendance at the hearing were Roger Witherow and Fred White, the appellants, Jimmy Dooley, Maury County Property Assessor, and Bobby Daniels, Deputy Assessor of Property.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Background and Contentions

Subject property consists of a 64.28 acre tract of land located on James Campbell Blvd. North in Columbia, Tennessee. The only improvements on subject property are a barn and attached shed.

Subject property historically received preferential assessment as “agricultural land” pursuant to the Agricultural, Forest and Open Space Land Act of 1976 (hereafter referred to as the “greenbelt law”). See Tenn. Code Ann. § 67-5-1001, et seq.

On April 6, 2006, the assessor of property issued assessment change notices reclassifying 10.0 acres as commercial property effective January 1, 2006 and assessing rollback taxes on those 10.0 acres for tax years 2003, 2004 and 2005. See Tenn. Code Ann. § 67-5-1008. The assessor's treatment of the 10.0 acres, now identified as special interest 001 is at issue. The taxpayers do not contest the assessor's treatment of the remaining 54.28 acres now identified as special interest 000.

The events leading up to the assessor's actions are not in dispute. On December 1, 2003, the taxpayers entered into a contract with Floyd and Floyd Contractors to move approximately 175,000 cubic yards of dirt and rock across James Campbell Blvd. to be used by another property owner to raise his property to road level. The cost for the excavation project was \$520,000. The work began in early 2004 and was completed in either late 2005 or early 2006 according to the conflicting testimony. The project lowered the front of subject property 10-15 feet, but it still remains approximately 10-15 feet above road level.

The 10.0 acres in question was historically used to cut hay or sow winter wheat. The acreage was not used for those purposes or any other agricultural purposes during 2004 and 2005. At some point in 2006 the taxpayers resumed utilizing the 10.0 acres to sow winter wheat.

The assessor essentially maintained that the 10.0 acres ceased to qualify for preferential assessment once the taxpayers began to use it for excavation purposes and ceased using it for agricultural purposes. Mr. Daniels stressed that subject property as a whole is presently listed for sale at \$7,250,000 and the excavation work enhanced its commercial viability while providing no corresponding agricultural benefit.

The taxpayers, in contrast, stressed that nothing has changed on subject property since their 1994 purchase except the hillside is no longer as steep. According to Mr. Witherow, the taxpayers simply took advantage of their neighbor's need for fill, but subject property still constitutes a single tract of land and continues to be offered for sale as such. Both Mr. White and Mr. Witherow testified that subject acreage will not truly be marketable until it is at road level which will require a significant expenditure.

II. Jurisdiction

Tennessee Code Annotated Section 67-5-1008(d)(3) provides that "[l]iability for rollback taxes, but not property values, may be appealed to the State board of Equalization by March 1 of the year following the notice by the assessor. The administrative judge finds that the taxpayers are properly before the State Board of Equalization on this issue because the assessor gave notice on April 6, 2006 and the appeal was filed on January 26, 2007.

The administrative judge finds that a jurisdictional issue does exist, however, with respect to the taxpayers' ability to contest the commercial reclassification of the 10.0 acres. This issue arises from the fact that no appeal was made to the Maury County Board of Equalization.

The administrative judge finds that Tennessee law requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing to the State Board of Equalization. Tenn. Code Ann. §§ 67-5-1401 & 67-5-1412(b). A direct appeal to the State Board is permitted only if the assessor does not timely notify the taxpayer of a change of

assessment prior to the meeting of the County Board. Tenn. Code Ann. §§ 67-5-508(a)(3) & 67-5-903(c). Nevertheless, the legislature has also provided that:

The taxpayer shall have right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.

Tenn. Code Ann. § 67-5-1412(e).

The administrative judge finds Mr. Witherow testified that after receiving the assessment change notice he promptly contacted the assessor's office and was advised to "let us check into it." The administrative judge finds the testimony of both Mr. Witherow and Mr. Dooley established that the taxpayers reasonably believed they were pursuing their administrative remedy locally, but a miscommunication resulted in their failure to formally appeal to the local board. Indeed, Mr. Dooley stated that he had no objection to the State Board of Equalization hearing the taxpayers' appeal.

Based upon the foregoing, the administrative judge finds that the testimony of both parties supports a finding of reasonable cause. Accordingly, the administrative judge finds that the State Board of Equalization also has jurisdiction over the classification issue.

III. Rollback and Classification

The administrative judge finds that the question which must be answered concerns whether subject property continued to qualify for preferential assessment as "agricultural land" once the excavation project began. The term "agricultural land" is defined in Tenn. Code Ann. § 67-5-1004(1)(A)(i) as land which "[c]onstitutes a farm unit engaged in the production or growing of agricultural products. . ." The administrative judge finds that in deciding whether a given tract constitutes "agricultural land" reference must be made to Tenn. Code Ann. § 67-5-1005(a)(3) which provides in pertinent part as follows:

In determining whether any land is agricultural land, the tax assessor shall take into account, among other things, the acreage of such land, the productivity of such land, and the portion thereof *in actual use for farming* or held for farming or agricultural operation.

[Emphasis Supplied]

The administrative judge finds that the evidence, viewed in its entirety, supports the assessor's contention that the 10.0 acres in dispute should not be classified as "agricultural land" for purposes of the greenbelt law. The administrative judge finds that once subject acreage began being utilized exclusively for excavation purposes it was no longer capable of being used for farming purposes. Indeed, the administrative judge finds that excavating dirt and rock for fill squarely constitutes a commercial use within the meaning of Tenn. Code

Ann. § 67-5-501(4). The administrative judge finds that the 10.0 acres in question was no longer part of a farm unit engaged in the production or growing of agricultural products. Hence, the administrative judge finds that the assessor properly assessed rollback taxes and reclassified the 10.0 acres commercially.

ORDER

It is therefore ORDERED that the following assessment of subject property remain in effect for tax year 2006:

S.I. 000

	<u>Acres</u>	<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Assessment</u>
MKT.	54.28	\$294,000	\$5,300	\$299,300	---
USE	54.28	\$ 33,600	\$5,300	\$ 38,900	\$9,725

S.I. 001

	<u>Acres</u>	<u>Land Value</u>	<u>Improvement Value</u>	<u>Total Value</u>	<u>Assessment</u>
	10.0	\$1,000,000	\$ -0-	\$1,000,000	\$400,000

It is FURTHER ORDERED that the rollback taxes levied for tax years 2003, 2004 and 2005 are hereby affirmed.

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.


Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 17th day of May, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Roger Witherow
Jimmy R. Dooley, Assessor of Property